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Amended, as per Hon'ble court order dt. 26.09.06.

Attested
Sd/-
AR(J)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH.

Cri.Appeal No. 370 /2001.

APPLICANT :- Telami Sailami Nadgu @ Sanna son of Dulla Muria, aged 37 years resident of Markhapal, P.S.Bairamgarh, District Dantewara(Bastar)(Chattisgarh).
(In Jail Custody)

Vs.

RESPONDENT :- State of Chhattisharh through P.S. Bairamgarh, District Dantewada, Bastar Chattisgarh.

CRIMINAL APPEAL UNDER SECTION 374(2)CR.P.C.

XI-HC-78

(18)
(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.R.No-370/ **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE MR. L.C. BHADOO &
HON'BLE MR.DHIRENDRA MISHRA, JJ

13.12.2006

Mr. V.P. Gupta, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State.

Heard.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J.

Today, this appeal is listed for hearing on M.Cr.P. No.836/01 filed on behalf of accused/appellant for suspension of sentence and grant of bail, but on the request of learned counsel for the parties, the appeal is finally heard and it is being disposed of finally.

This appeal is directed against the judgment of conviction and order of sentence dated 19.2.2001 passed by the 3rd Additional Sessions Judge, Bastar at Jagdalpur in S.T.No.80/2000, whereby the Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo rigorous imprisonment for life.

The case of the prosecution, in brief, is that on 24.12.1999 at about 6-7 p.m. accused/appellant attacked deceased Paklu with a pestle

P.T.O.

आदेश पत्रक (पूर्वानुबद्ध)

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as a result of which Paklu fell down and succumbed to the injuries. The matter was reported by Barsa in the Police Station Bhairamgarh on 25.12.1999, based on that F.I.R. (Ex.P-9) was registered for commission of offence under Section 302 of the I.P.C. The Investigating Officer took up the investigation, left for the scene of occurrence and after giving notice (Ex.P-3) to the Panchas prepared the inquest on the body of Paklu. While in the police custody, accused gave memorandum (Ex.P-5) regarding the place where he kept the pestle, weapon of offence and in pursuance of that, the pestle was seized under Ex.P-6. Site plan (Ex.P-7) was prepared by the Investigating Officer. Dead body of Paklu was sent for postmortem examination to the Primary Health Centre, Bhairamgarh where Dr. Mukesh Soni (PW-8) conducted the postmortem on the body of deceased and prepared the postmortem report Ex.P-10 in which he opined that cause of death of Paklu was cardiac failure on account of collapse of left lung & filling of left plural cavity with blood.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of Chief Judicial Magistrate, Dantewada, who in turn committed the case to learned Sessions Judge, Jagdalpur from where 3rd Additional Sessions Judge, Jagdalpur received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellant examined nine witnesses. Statement of accused was recorded under Section 313 of the Cr.P.C. in

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आदेश पत्रक (पूर्वानुबद्ध)

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which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing learned counsel for the respective parties, convicted and sentenced the accused/appellant herein in the manner afore-mentioned.

We have heard Mr. V.P. Gupta, Advocate for accused/appellant and Mr. U.N.S. Deo, APP with Mr. Akhil Mishra, Panel Lawyer for the State.

Learned counsel for the accused/appellant has not disputed the homicidal death of Paklu. Apart from that, PW-6 Warsa has stated that the accused attacked the deceased with a pestle, as a result of which he received injuries on his chest, his left lung was collapsed. The above evidence of Warsa (PW-6) stands corroborated by the medical evidence of Dr. Mukesh Soni (PW-8) who has stated that on 26.12.1999 he conducted postmortem examination on the body of Paklu and on postmortem he noticed that left lung was ruptured, left cavity was full of blood and Paklu died on account of rupture of lung. Therefore, from the above ocular and medical evidence, it is established that the death of Paklu was homicidal in nature.

As far as involvement of the accused/appellant in crime in question is concerned, learned counsel for the accused/appellant argued

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आदेश पत्रक (पूर्वानुबद्ध)

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that in this case all other witnesses have turned hostile and even so called eyewitness i.e. Warsa (PW-6), who is the son of deceased Paklu, has also turned hostile to certain extent. Even otherwise, being the son of deceased he is an interested witness, therefore, no reliance can be placed on his evidence.

On the other hand, learned counsel for the State supported the judgment of the trial court.

In order to appreciate the arguments advanced by learned counsel for the appellant, we have perused the evidence of PW-6 Warsa, who has categorically stated that accused Nadgu attacked his father with the pestle thrice on his chest. Even though this witness has been declared hostile but on the cross-examination by the Assistant Public Prosecutor, he has categorically supported the prosecution case and stated that it is incorrect to say that he had not witnessed the incident in question. In the cross-examination he has further stated that accused attacked his father with a pestle on his chest 3-4 times and his evidence is corroborated by the medical evidence of Dr. Mukesh Soni (PW-8), who has stated that the left lung of the deceased was ruptured.

It is settled law that evidence of a prosecution witness cannot be rejected merely on the ground that he is an interested or related witness. The principle is that in such a case the Court is required to scrutinize the evidence with care and circumspection. In the cross-

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examination of this witnesses by the defence counsel, the defence has not been able to elicit any circumstance which discredit the evidence of this witness. Merely because he is the son of the deceased, his evidence cannot be rejected out-rightly. This witness has very categorically stated that he witnessed the incident and he was present on the scene of occurrence. Therefore, involvement of the accused/appellant in the crime in question is established, finding of the trial court convicting and connecting the accused/appellant with the crime in question is based on the legal clinching evidence and we do not find any illegality or infirmity in the judgment of the trial court.

In the result, the appeal being devoid of merit is liable to be dismissed and it is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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